

ORDER SHEET  
**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT HYDERABAD**

Criminal Revision Application No.S-184 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>05-05-2023</u>	For orders on office objection. For orders on MA No.4193 / 2023. For hearing of main case.
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Mr. Adnan Ahmed Khan, Advocate for the applicant files statement along with certified true copies of Examiantion-in-Chieves of witnesses namely Ikhtiar Ahmed Kanzada and Abdul Ghafoor, taken on record.

Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Respondent No.1 Muhammad Asif is present in person and files statement along with certain electricity bills, taken on record.

**Amjad Ali Sahito, J:-** Through instant criminal revision application, the applicant has impugned the order dated 21.11.2022 passed by learned 7<sup>th</sup> Additional Sessions Judge, Hyderabad in I.D. Complaint No.87 of 2022, which was filed under sections 3 & 4 of Illegal Dispossession Act, 2005, by the applicant/complainant Ghulam Asghar, whereby the same was dismissed.

2. Per learned counsel, applicant is the owner of subject property, which was purchased by him from Haji Muhamamd Ali. He further submits that since then they are in possession of the said property but subsequently, respondent No.1 took over the possession on 22.09.2022, as such, learned trial Court has not considered the request made by the complainant. He lastly prayed that the impugned order may be set aside and case may be remanded back to the learned trial Court for trial.

3. On the other hand, respondent No.1 present in person submits that he has purchased the said property from Ghulam Asghar and has also filed a Suit bearing No.166 of 2017 for Specific Performance of Contract and Permanent Injunction, which is pending adjudication before the learned 4<sup>th</sup> Senior Civil Judge, Hyderabad.

4. Learned A.P.G. Sindh has also supported the impugned order.

5. Heard and perused.

6. Record reflects that after filing application in terms of 3 and 4 of Illegal Dispossession Act, 2005, a report was called from the concerned SHO, who in his report submitted that present the plot and shop is in possession of one Muhammad Asif and the sale deed in the name of Ghulam Asghar. The report was also called from the Mukhtiarkar, Taluka Hyderabad, which reveals

that as per entry No.112 in the year 1985-86 of deh Chacha Detha Tappa Tando Hyder Taluka Hyderabad, Survey No.291 area (07-26 1/3) acres shown mutated in the names of Ghulam Hussain son of Haji Sajjan Kori share 0.50 paisa and Ghulam Qadir s/o Haji Sajjan Kori share 0.50 paisa, total full rupee in the record of rights. He has also reported that a note is pasted on the above entry that the sale certificate of an area (0.02) ghunta has already been issued on 23.12.2014. Learned trial Court after receiving report has not taken cognizance of the case and dismissed the complaint. It would be appropriate to reproduce the relevant para of the impugned order which reads as under:-

*“The offence of illegal dispossession act is a special enactment wherein under section 3 a person who without any lawful authority dispossess, grab, control or occupy a property, he is charged. In the present case, it is admitted position that per Mukhtiarkar report, the property is registered in the name of Ghulam Hussain and Ghulam Qadir and nowhere complainant is appearing as an owner in the record. Surprisingly, he had produced a sale deed wherein the vendor is one Haji Muhammad Ali S/o Wali Muhammad who is also not registered owner in the record lying with Mukhtiarkar and due to absence of title of chain the sale deed, it is difficult to understand, how Haji Muhammad Ali became owner for selling it to Ghulam Asghar. On the other hand, a civil suit bearing No.166 of 2016 filed by the present accused Asif against Ghulam Asghar is also pending for adjudication wherein he claims to have purchased the alleged property. Although, this court cannot decide title but unfortunately none of the party i.e. complainant or accused Asif had given any justification to show that they are lawful owners of the property or even lawful occupier. It is quite possible that the original owners namely Ghulam Hussain & Ghulam Qadir have been unaware about the transaction on the property and this war is being played between both parties i.e. complainant and accused without their knowledge. Thus, mere possession with any party is not requisite of taking cognizance, there must be a lawful possession or occupation which further shifted in illegal dispossession. Moreover, the title as well as question of lawful occupation of such property is subjudiced before civil court and even title of both complainant and accused are not supported by the report of Mukhtiarkar, I am of this humble view that this court cannot take cognizance of this complaint on the basis of available circumstances and evidence. The complaint in hand is hereby dismissed.”*

7. It further reflects that the said property originally belong to one Hai Ghulam Hussain and Ghulam Qadir and registered in their names in the record of rights. However, subsequently transaction in respect of said property, if any, is made, which cannot change the ownership until and unless, declared by the competent of Court when the parties are claiming their ownership respectively upon the same property especially when the said property is not entered in their names. Further, the respondent No.1 has filed a F.C. Suit No.166 of 2017 for Specific Performance of Contract and Permanent

Injunction, which is pending adjudication before the learned 4<sup>th</sup> Senior Civil Judge, Hyderabad, wherein the applicant has full opportunity to put forward his claim.

8. In view of the above facts and circumstances, the applicant has failed to point out any illegality or irregularity in the impugned order, which does not require any interference by this Court. Consequently, instant criminal revision application is **dismissed** along with listed application.

JUDGE

\*Abdullah Channa/PS\*